

AMENDED IN ASSEMBLY JUNE 7, 2010

SENATE BILL

No. 1462

Introduced by Senator Padilla

February 19, 2010

An act to ~~amend Sections 2889.4, 2889.5, and 2894 of the Public Utilities~~ *add Chapter 13 (commencing with Section 8885) to Division 1 of Title 2 of the Government Code*, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

SB 1462, as amended, Padilla. ~~Public utilities; local exchange carriers. Telecommunications: California Broadband Council.~~

The existing federal Telecommunications Act of 1996 establishes a program for the regulation of telecommunications to attain the goal of local competition, while implementing specific, predictable, and sufficient federal and state mechanisms to preserve and advance universal service, consistent with certain universal service principles. The universal service principles include the principle that consumers in all regions of the nation, including low-income consumers and those in rural, insular, and high-cost areas, should have access to telecommunications (including broadband) and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. That act additionally requires the Federal Communications Commission and each state commission with regulatory jurisdiction over telecommunications services, in California the Public Utilities Commission, to encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans by

utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment. The act defines “advanced telecommunications capability,” without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.

This bill would establish the California Broadband Council composed of specified members. The bill would impose specified duties on the council relating to the promotion of broadband deployment and adoption throughout the state.

~~Existing law regulating the provision of telecommunications services requires a local exchange service provider to provide prescribed consumer protections relating to pay-per-use telephone service features and verification of changes in service providers.~~

~~This bill would revise those provisions to refer to local exchange carriers instead of local exchange service providers.~~

~~Under existing law, the disclosure of any information by an interexchange telephone corporation, a local exchange telephone corporation, or a provider of commercial mobile radio service, as defined, in good faith compliance with the terms of a state or federal court warrant or order or administrative subpoena issued at the request of a law enforcement official or other federal, state, or local governmental agency for law enforcement purposes, is a complete defense against specified civil actions for the wrongful disclosure of that information.~~

~~This bill would revise that reference to a local exchange telephone corporation to, instead, refer to a local exchange carrier.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Chapter 13 (commencing with Section 8885) is
- 2 added to Division 1 of Title 2 of the Government Code, to read:

1 *CHAPTER 13. CALIFORNIA BROADBAND COUNCIL*

2
3 8885. *The California Broadband Council is established in state*
4 *government for the purpose of promoting broadband deployment*
5 *and adoption throughout the state for the benefit of all*
6 *Californians.*

7 8886. *The membership of the California Broadband Council*
8 *shall include all of the following:*

9 (a) *The State Chief Information Officer, or his or her designee.*

10 (b) *The President of the Public Utilities Commission, or his or*
11 *her designee.*

12 (c) *The Secretary of California Emergency Management, or his*
13 *or her designee.*

14 (d) *The Superintendent of Public Instruction, or his or her*
15 *designee.*

16 (e) *The Director of General Services, or his or her designee.*

17 (f) *The Secretary of Business, Transportation and Housing, or*
18 *his or her designee.*

19 (g) *The President of the California Emerging Technology Fund,*
20 *or his or her designee.*

21 (h) *A member of the Senate, appointed by the Senate Committee*
22 *on Rules.*

23 (i) *A member of the Assembly, appointed by the Speaker of the*
24 *Assembly.*

25 8887. *Duties of the California Broadband Council shall*
26 *include, but not be limited to, all of the following:*

27 (a) *Ensuring communication among state agencies regarding*
28 *California's participation in proceedings related to the National*
29 *Broadband Plan adopted by the Federal Communications*
30 *Commission.*

31 (b) *Ensuring that state agencies share all relevant information*
32 *in order to maximize California's opportunities for federal and*
33 *private funding for broadband deployment and adoption.*

34 (c) *Ensuring that all relevant state agencies are made aware*
35 *of actions necessary to fully implement recommendations in the*
36 *2008 Broadband Task Force Report.*

37 (d) *Identifying opportunities for state agencies and state*
38 *broadband networks to share facilities, rights-of-way, or other*
39 *resources related to broadband deployment and adoption.*

1 (e) Taking any other actions to ensure that state agencies are
2 coordinating efforts and resources to promote broadband
3 deployment and adoption.

4 8888. (a) The President of the Public Utilities Commission
5 shall call the first meeting of the California Broadband Council,
6 to be held not later than March 1, 2011. The President of the Public
7 Utilities Commission shall serve as chair of the council for the
8 first meeting.

9 (b) At the first meeting, the members of the council shall choose
10 a chair for subsequent meetings, and may choose a vice chair to
11 act as chair when the chair is unavailable.

12 (c) Subsequent meetings of the council shall be convened as
13 determined by the chair of the council, but in no event shall the
14 meetings be convened less than three times annually.

15 ~~SECTION 1. Section 2889.4 of the Public Utilities Code is~~
16 ~~amended to read:~~

17 ~~2889.4. (a) A local exchange carrier that offers and charges~~
18 ~~for pay per use features that do not require an access code to be~~
19 ~~dialed to activate the service shall provide a new residential~~
20 ~~subscriber, including an existing residential customer ordering an~~
21 ~~additional line, during the verbal service order process, with~~
22 ~~information about those features. The representatives of a carrier~~
23 ~~shall offer that subscriber blocking options for those features.~~

24 ~~(b) (1) A local exchange carrier that offers the features~~
25 ~~described in subdivision (a) shall advise an existing residential~~
26 ~~subscriber who inquires about the features, or who seeks a bill~~
27 ~~adjustment for the inadvertent or unauthorized use of those per~~
28 ~~use custom calling features, that the features can be blocked and~~
29 ~~shall inquire as to whether the subscriber would like to block any~~
30 ~~or all of the features.~~

31 ~~(2) (A) A local exchange carrier that offers the features~~
32 ~~described in subdivision (a) shall provide notice to all existing~~
33 ~~residential subscribers not later than May 1, 2000, describing all~~
34 ~~features provided on a per use basis, the charge for each activation,~~
35 ~~any additional usage or other charges, and detailed information~~
36 ~~about the ability to block these features.~~

37 ~~(B) The notice shall contain a toll-free number for further~~
38 ~~information and shall contain a noticeable postcard size bill insert~~
39 ~~that may be returned in the subscriber's bill envelope if they wish~~

1 to block any or all of the per use features described in subdivision
2 (a):

3 (e) A local exchange service subscriber that has not blocked per
4 use features in accordance with this section is entitled to a one-time
5 bill adjustment that shall equal the sum of the charges for every
6 incident that occurred during the first billing cycle pursuant to
7 which the subscriber notifies the local exchange carrier that
8 inadvertent or unauthorized activation occurred with regard to
9 those per use services that do not require coded dialing to activate.
10 The one-time bill adjustment shall include an adjustment for any
11 additional usage charges occurring as a result of inadvertent or
12 unauthorized activation. The adjustment shall take the form of a
13 credit to the subscriber's account if the existing technology or
14 facilities of the local exchange carrier measure usage and permit
15 a usage credit to be determined and provided.

16 (d) Nothing in this section prohibits a local exchange carrier
17 from providing additional bill adjustments at its discretion in
18 connection with charges imposed for features described in
19 subdivision (a):

20 SEC. 2. Section 2889.5 of the Public Utilities Code is amended
21 to read:

22 2889.5. (a) A telephone corporation, or any person, firm, or
23 corporation representing a telephone corporation, shall not make
24 any change or authorize a different telephone corporation to make
25 any change in the provider of any telephone service for which
26 competition has been authorized of a telephone subscriber until
27 all of the following steps have been completed:

28 (1) The telephone corporation, its representatives or agents shall
29 thoroughly inform the subscriber of the nature and extent of the
30 service being offered.

31 (2) The telephone corporation, its representatives or agents shall
32 specifically establish whether the subscriber intends to make any
33 change in his or her telephone service provider, and explain any
34 charges associated with that change.

35 (3) For sales of residential service, the subscriber's decision to
36 change his or her telephone service provider shall be confirmed
37 by an independent third-party verification company, or as provided
38 in paragraph (5). For purposes of this provision, the confirmation
39 by a third-party verification company shall be made as follows:

1 (A) The third-party verification company shall meet each of the
2 following criteria:

3 (i) Be independent from the telephone corporation that seeks to
4 provide the subscriber's new service.

5 (ii) Not be directly or indirectly managed, controlled, or directed,
6 or owned wholly or in part, by the telephone corporation that seeks
7 to provide the new service or by any corporation, firm, or person
8 who directly or indirectly manages, controls, or directs, or owns
9 more than 5 percent of the telephone corporation.

10 (iii) Operate from facilities physically separate from those of
11 the telephone corporation that seeks to provide the subscriber's
12 new service.

13 (iv) Not derive commissions or compensation based upon the
14 number of sales confirmed.

15 (B) The telephone corporation seeking to verify the sale shall
16 do so by connecting the subscriber by telephone to the third-party
17 verification company or by arranging for the third-party verification
18 company to call the subscriber to confirm the sale.

19 (C) The third-party verification company shall obtain the
20 subscriber's oral confirmation regarding the change, and shall
21 record that confirmation by obtaining appropriate verification data.
22 The record shall be available to the subscriber upon request.
23 Information obtained from the subscriber through confirmation
24 shall not be used for marketing purposes. Any unauthorized release
25 of this information is grounds for a civil suit by the aggrieved
26 subscriber against the telephone corporation or its employees who
27 are responsible for the violation.

28 (D) Notwithstanding subparagraphs (A), (B), and (C), a service
29 provider shall not be required to comply with these verification
30 requirements when the customer directly calls the local service
31 provider to make changes in service providers. However, a service
32 provider shall not avoid the verification requirements by asking a
33 subscribing customer to contact a local exchange carrier directly
34 to make any change in the service provider. A local exchange
35 carrier shall be required to comply with these verification
36 requirements for its own competitive services. However, a local
37 exchange carrier shall not be required to perform any verification
38 requirements for any changes solicited by another telephone
39 corporation.

1 ~~(4) For a sale of residential service, the telephone corporation~~
2 ~~seeking to verify the change in service, in addition to the~~
3 ~~requirements of paragraph (3), shall notify the subscriber by United~~
4 ~~States Postal Service that the subscriber's telephone service~~
5 ~~provider has been changed. The service provider that initiated the~~
6 ~~change shall send that notice within 14 days of the date of the~~
7 ~~change. The notice shall provide the subscriber with clear, legible~~
8 ~~notice of the change in service provider, and shall include a~~
9 ~~customer service telephone number for the subscriber to call if the~~
10 ~~subscriber did not authorize the change in service.~~

11 ~~(5) Confirmation of a sale of residential service may be made~~
12 ~~using an electronic means that complies with Section 64.1120 of~~
13 ~~Title 47 of the Code of Federal Regulations in effect as of June~~
14 ~~17, 2008.~~

15 ~~(6) For sales of all nonresidential services, the subscriber's~~
16 ~~decision to change his or her service provider shall be confirmed~~
17 ~~through any of the following means:~~

18 ~~(A) Independent third-party verification, as set forth in paragraph~~
19 ~~(3).~~

20 ~~(B) The telephone corporation shall mail to the subscriber an~~
21 ~~information package seeking confirmation of his or her change in~~
22 ~~the telephone corporation. The information package shall describe~~
23 ~~the new service and shall include a postage prepaid postcard or~~
24 ~~mailer that the subscriber can use to deny, cancel, or confirm a~~
25 ~~service order, as soon as possible, and wait 14 days after the~~
26 ~~information package is mailed before making the change in the~~
27 ~~telephone corporation. The telephone corporation shall make the~~
28 ~~change only if the subscriber does not cancel the change in service~~
29 ~~order.~~

30 ~~(C) Verify the subscriber's change in his or her telephone service~~
31 ~~provider by obtaining the subscriber's signature on a document~~
32 ~~fully explaining the nature and extent of the action. The document~~
33 ~~shall be a separate document, the sole purpose of which is to~~
34 ~~explain the nature and extent of the action.~~

35 ~~(D) Obtain the subscriber's authorization through an electronic~~
36 ~~means that takes the information, including the calling number,~~
37 ~~and confirms the change to which the subscriber has given his or~~
38 ~~her consent.~~

39 ~~(7) Where the telephone corporation obtains a written order for~~
40 ~~service, the document shall thoroughly inform the subscriber of~~

~~the nature and extent of the action. The subscriber shall be furnished with a copy of the signed document. The subscriber by his or her signature on the document shall indicate a full understanding of the relationship being established with the telephone corporation. If a written subscriber solicitation or other document contains a letter of agency authorizing a change in service provider, in combination with other information including, but not limited to, inducements to subscribers to purchase service, the solicitation shall include a separate document, the sole purpose of which is to explain the nature and extent of the action. If any part of a mailing to a prospective subscriber is in language other than English, any written authorization contained in the mailing shall be sent to the same prospective subscriber in the same language.~~

~~(8) The telephone corporation shall retain a record of the verification of the sale for at least one year. These records shall be made available to the subscriber, the Attorney General, or the commission upon request.~~

~~(b) If a residential or business subscriber that has not signed an authorization notifies the telephone corporation within 90 days that he or she does not wish to change telephone corporations, the subscriber shall be switched back to his or her former telephone corporation at the expense of the telephone corporation that initiated the change.~~

~~(c) For purposes of this section, competitive services are those services where subscribers have the ability to presubscribe to a telephone service provider.~~

~~(d) When a subscriber changes telephone service providers, the change shall be conspicuously noticed on the subscriber's bill. Notice in the following form is deemed to comply with this subdivision:~~

~~“NOTICE: Your local (or long distance) telephone service provider has been changed from (name of prior provider) to (name of current provider):~~

~~Cost of change: \$ ____.”~~

~~(e) Any telephone corporation that violates the verification procedures described in this section shall be liable to the telephone corporation previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.~~

1 ~~(f) In addition to the liability described in subdivision (e), any~~
2 ~~telephone corporation that violates the verification procedures~~
3 ~~described in this section shall credit to a subscriber any charges~~
4 ~~paid by the subscriber in excess of the amount that the subscriber~~
5 ~~would have been obligated to pay had the subscriber's telephone~~
6 ~~service not been changed. The commission shall adopt regulations~~
7 ~~to govern credits to subscribers pursuant to this subdivision.~~

8 ~~(g) The remedies provided by this section are in addition to any~~
9 ~~other remedies available by law.~~

10 ~~(h) As described in federal law, no telephone corporation, or~~
11 ~~any person, firm, or corporation representing a telephone~~
12 ~~corporation, shall make any change or authorize a different~~
13 ~~telephone corporation to make any change in the provider of any~~
14 ~~telephone service for which competition has been authorized of a~~
15 ~~telephone subscriber without having on file, or having instituted~~
16 ~~reasonable steps designed to obtain, signed, dated orders for service~~
17 ~~from the subscriber. All orders shall be in the form prescribed in~~
18 ~~federal law for letters of agency. As described in federal law, the~~
19 ~~telephone corporation is responsible for charges associated with~~
20 ~~disputed changes in telephone service for which it cannot produce~~
21 ~~a signed, dated order for service from the subscriber. This~~
22 ~~subdivision applies to all intrastate services for which competition~~
23 ~~has been authorized.~~

24 ~~SEC. 3. Section 2894 of the Public Utilities Code is amended~~
25 ~~to read:~~

26 ~~2894. (a) Notwithstanding subdivision (c) of Section 2891,~~
27 ~~the disclosure of any information by an interexchange telephone~~
28 ~~corporation, a local exchange carrier, or a provider of commercial~~
29 ~~mobile radio service, as defined in Section 216.8, in good faith~~
30 ~~compliance with the terms of a state or federal court warrant or~~
31 ~~order or administrative subpoena issued at the request of a law~~
32 ~~enforcement official or other federal, state, or local governmental~~
33 ~~agency for law enforcement purposes, is a complete defense against~~
34 ~~any civil action brought under this chapter or any other law,~~
35 ~~including, but not limited to, Chapter 1.5 (commencing with~~
36 ~~Section 630) of Part 1 of Title 15 of Part 1 of the Penal Code, for~~
37 ~~the wrongful disclosure of that information.~~

38 ~~(b) As used in this section the following terms have the~~
39 ~~following meanings:~~

- 1 ~~(1) “Interexchange telephone corporation” means a telephone~~
- 2 ~~corporation that is a long-distance carrier.~~
- 3 ~~(2) “Local exchange carrier” means a telephone corporation~~
- 4 ~~that provides local exchange services.~~